

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BIG LOTS, INC., *et al.*,

Debtors.

Chapter 11

Case No. 24-11967 (JKS)

(Jointly Administered)

Obj. Deadline: November 6, 2024 at 4:00 p.m. (ET)

Hearing Date: November 12, 2024 at 1:30 p.m. (ET)

Related Docs: 511, 612, 661 & 683

**OBJECTION AND RESERVATION OF RIGHTS OF DIVISIONS, INC.
TO: (I) THE NOTICE OF (A) POTENTIAL ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS OR UNEXPIRED LEASES AND (B) CURE AMOUNTS;
AND (II) THE PROPOSED SALE**

Divisions, Inc. d/b/a Divisions Maintenance Group (“Divisions”) hereby files this objection and reservation of rights (this “Objection”) to the *Notice of (I) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and Cure Amount* [Docket No. 511] (the “First Assignment Notice”), the *Notice of Proposed Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amounts* [Docket No. 683] (the “Second Assignment Notice” and together with the First Assignment Notice, the “Assignment Notices”), and the proposed sale of the debtors’ (the “Debtors”) assets pursuant to the *Order (I) Approving Certain Bidding Procedures for Sale of the Debtors’ Assets, (II) Approving the Stalking Horse Bid Protections, (III) Scheduling Auction for, and Hearing to Approve, Sale of Debtors’ Assets, (IV) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, (V) Approving Assumption and Assignment Procedures, and (VI) Granting Related Relief* [Docket No. 612] (the “Bid Procedures Order”). In support of this Objection, Divisions respectfully states:¹

¹ Capitalized terms used herein but undefined shall have the meanings ascribed to them in the Assignment Notices, Bid Procedures Order, or the Successful Bidder Notice (as defined herein), as applicable.

BACKGROUND

1. On September 9, 2024 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (this “Court”).

A. The Agreements

2. Prior to the Petition Date, the Debtors and Divisions entered into that certain master services agreement (the “Master Services Agreement”) and confidentiality agreement (collectively, the “Agreements”), pursuant to which Divisions provides facilities management services to certain of the Debtors’ locations in the United States.

3. On September 9, 2024, the Debtors filed their *Motion of Debtors for Entry of Orders (I) (A) Approving Bidding Procedures for Sale of Debtors’ Assets, (B) Approving the Stalking Horse Bid Protections, (C) Scheduling Auction for, and Hearing To Approve, Sale of Debtors’ Assets, (D) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, and (E) Approving Assumption and Assignment Procedures, (II) (A) Approving Sale of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. 18] (the “Bid Procedures Motion”).

B. The Proposed Cure Amount

4. As contemplated by the Bid Procedures Order, on October 16, 2024, the Debtors filed the First Assignment Notice, which identifies certain executory contracts that the Debtors may assume and assign in connection with the Proposed Sale, including the Agreements. The First Assignment Notice proposes the following amount necessary to cure all monetary defaults under the Agreements:

Debtor Name	Contract Counterparty Name	Preliminary Estimated Cure Amount	Contract/Lease Title or Description
Big Lots Inc.	Divisions Maintenance Group	*	Confidentiality Agreement
Big Lots Inc.	Divisions Inc. dba Divisions Maintenance Group	\$94,663.00	Services Agreement

5. On October 30, 2024, the Debtors filed their *Notice of Successful Bidder for the Sale of the Debtors' Assets* [Docket No. 661] (the “Successful Bidder Notice”). The Successful Bidder Notice identifies Gateway BL Acquisition, LLC as the Successful Bidder.

6. On October 31, 2024, the Debtors filed the Second Assignment Notice identifying the executory contracts and unexpired leases that the Debtors intend to assume and assign to the Successful Bidder, including the Agreements. The Second Assignment Notice proposes the following amount necessary to cure all monetary defaults under the Agreements (the “Proposed Cure Amount”):

Big Lots, Inc.	Divisions Maintenance Group	\$	-	Confidentiality Agreement
Big Lots, Inc.	Divisions, Inc. dba Divisions Maintenance Group	\$	94,663.43	Services Agreement

7. As provided by the Assignment Notices, the deadline to file an Assumption and Assignment Objection is November 6, 2024 at 4:00 p.m.

OBJECTION AND RESERVATION OF RIGHTS

8. While Divisions does not generally oppose the assumption and assignment of the Agreements to a financially viable assignee, Divisions objects to the assumption and assignment of the Agreements by the Debtors as currently proposed. The proposed assumption and assignment of the Agreements fails to strictly comply with the requirements of section 365 of the Bankruptcy Code and the terms and conditions of the Agreements. The proposed assumption and assignment of the Agreements by the Debtors must be conditioned on, among other things, the payment of all amounts due and owing under the Agreements through the effective date of the assignment of the Agreements.

9. The Debtors' proposed assumption and assignment of the Agreements must be conditioned on all defaults under the Agreements being cured by the Debtors as of the effective date of the assumption and assignment of the Agreements. As of the date of this Objection, the aggregate cure amount due and owing under the Agreements is in an amount not less than \$205,318.01 (i.e., the

“Cure Amount”), although amounts due and owing under the Agreements continue to accrue from and after the date of this Objection.

10. The Cure Amount represents known amounts that are currently due and owing to Divisions under the Agreements, exclusive of any sums which have become due or have been paid after the date of this Objection. The Cure Amount may increase prior to any actual date of assumption and assignment of the Agreements if the Debtors do not timely and properly pay all amounts that accrue after the date of this Objection (as required by the Bankruptcy Code) pursuant to the Agreements and other amounts that may come due pursuant to the terms of the Agreements and regardless of when those amounts accrued.

11. Accordingly, Divisions expressly reserves its right to amend or supplement this Objection and the Cure Amount from time to time and at any time, and requests that the Debtors remain liable for, among other things: (a) all post-Petition Date charges under the Agreements; (b) all amounts accruing under the Agreements which may be unbilled as of the date of this Objection; (c) any regular or periodic adjustment of charges under the Agreements which were not due or had not been determined as of the date of this Objection; (d) any non-monetary defaults; and/or (e) other contractual obligations under the Agreements.

12. As part of the proposed assumption and assignment of the Agreements, the Debtors must assume and assign the Agreements in their entirety. This obligation requires the Debtors to assume and assign all terms, conditions, covenants, and obligations under the Agreements, whether monetary or non-monetary, for which the Debtors are responsible pursuant to the Agreements. Any order entered by this Court approving the assumption and assignment of the terms and conditions should provide for the same.

13. Consistent with the foregoing, Divisions respectfully requests that any order

approving the assumption and assignment of the Agreements provide, among other things, that the Debtors or any proposed assignee of the Agreements pay to Divisions, on the effective date of the assumption and assignment, all amounts due and owing under the Agreements through the effective date of assignment of the Agreements (i.e., the Cure Amount, as the same may increase).

RESERVATION OF RIGHTS

14. Nothing in this Objection is intended to be, or should be construed as, a waiver by Divisions of any of its rights under any of the Agreements, the Bankruptcy Code, or applicable law. Divisions expressly reserves all such rights, including, without limitation, the right to: (a) supplement and/or amend this Objection and to assert any additional objections with respect to the Cure Amount and any proposed assignment of the Agreements on any and all grounds; (b) amend the Cure Amount; (c) assert any nonmonetary defaults under the Agreements; (d) object to any proposed assignee's adequate assurance of future performance; and (e) assert any further objections as it deems necessary or appropriate.

WHEREFORE, Divisions respectfully requests that this Court enter an order: (a) sustaining this Objection; (b) affirmatively requiring the Debtors or any assignee of the Agreements to comply with each and every term, condition and obligation set forth in the Agreements; and (c) granting Divisions such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: November 5, 2024

Landis Rath & Cobb LLP

/s/ Kimberly A. Brown

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